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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 BETTY JEAN COPELAN,) CASE NO. ED CV 11-01455 RZ
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13 Plaintiff,)
14)
15 vs.) MEMORANDUM OPINION
16) AND ORDER
17)
18 MICHAEL J. ASTRUE, Commissioner)
19 of Social Security,)
20)
21 Defendant.)
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17 Plaintiff Betty Jean Copelan seeks reversal of the Social Security
18 Commissioner's decision denying her application for disability benefits. She contends that
19 the Administrative Law Judge did not properly consider all the relevant medical evidence,
20 that he did not properly assess her credibility and that he did not properly consider her past
21 relevant work. The Court agrees with the first of these arguments, and therefore does not
22 address the other two arguments.

23 The Administrative Law Judge placed heavy reliance on the testimony of the
24 medical expert, who responded to questions from the Administrative Law Judge about the
25 objective medical evidence. As far as it went, this was sufficient evidence for the
26 Administrative Law Judge to rely upon. But the one area in which it was not sufficient
27 concerned a diagnosis of fibromyalgia. The Administrative Law Judge stated that "I agree
28 with Dr. Lorber that the record lacks sufficient clinical or laboratory support for a diagnosis

1 of fibromyalgia, which was also not credited by Dr. Nafsoosi.” [AR 17] This, however, is
2 not an accurate statement of the remarks of either Dr. Lorber, the testifying medical expert,
3 or Dr. Nafsoosi, the medical expert who responded to interrogatories from the
4 Administrative Law Judge.

5 Dr. Lorber was asked to give his “objective review of the file from an
6 orthopedic surgery standpoint, including her obesity.” [AR 27] Fibromyalgia, however,
7 is, according to the Ninth Circuit, not an orthopedic malady, but a rheumatic disease, that
8 is diagnosed entirely on the basis of the patient’s reports of pain and other symptoms, and
9 there currently are no laboratory tests to confirm the diagnosis. *Benecke v. Barnhart*, 379
10 F.3d 587, 589 (9th Cir. 2004). Thus, Dr. Lorber, asked to give his views from an
11 orthopedic surgery standpoint, did not have special expertise in this area and, if Dr. Lorber
12 had said that the record lacks sufficient laboratory findings, for example, that would have
13 been beside the point given the nature of the syndrome. However, Dr. Lorber did not say
14 that the record lacks sufficient clinical or laboratory support for a finding of fibromyalgia;
15 he merely said that the report of the doctor who provided the diagnosis of fibromyalgia is
16 not in the record. (“Diagnosed by a rheumatologist as having fibromyalgia. We don’t have
17 his report, only a reference to it in 11-F, 41.” [AR 29])

18 It is also not correct to say that a diagnosis of fibromyalgia was “not credited
19 by Dr. Nafsoosi.” [AR 17] Dr. Nafsoosi did not say anything one way or the other about
20 fibromyalgia. [AR 501-03] Moreover, the Administrative Law Judge stated that he
21 accorded “no weight” to the opinion of Dr. Nafsoosi [AR 16], so whether Dr. Nafsoosi
22 “credited” the diagnosis or not would seem to be not relevant.

23 However, the Administrative Law Judge did himself provide reasons why he
24 did not accept that Plaintiff suffered from fibromyalgia: that there were no laboratory
25 studies in support of such a diagnosis, that the trigger points were not enumerated, and that
26 the reports were intermittent and not tied to sustained symptoms. [AR 18] As noted, it is
27 not surprising that there were no laboratory studies, *Benecke, supra*; the rest of the
28 Administrative Law Judge’s criticism, however, involves a medical judgment, not a legal

1 one, and it requires a medical assessment. *Day v. Weinberger*, 522 F.2d 1154, 1156 (9th
2 Cir. 1975); *Manso-Pizarro v. Secretary of Health and Human Services*, 76 F.3d 15, 17 (1st
3 Cir. 1996). As Dr. Lorber noted, there is a diagnosis from a rheumatologist in the record,
4 but the reason the diagnosis was made does not appear. That does not, in itself, invalidate
5 it; it calls for further inquiry, either to obtain the report or, if it is not obtainable, perhaps
6 to send the claimant for a consultative examination from a rheumatologist. The exact
7 approach, of course, is up to the Commissioner.

8 The Court recognizes that much of Plaintiff's complaints concerned her back,
9 and that the fibromyalgia diagnosis, in some senses, might be the tail wagging the dog. Be
10 that as it may, the diagnosis is there, and there are some references in the record to trigger
11 points and other matters consistent with it. The record on this point needs further
12 development.

13 Because the Court remands on this point, it does not address further the
14 arguments about Plaintiff's credibility and her past relevant work as a bindery machine
15 operator. However, the Commissioner may wish to take a further look at these issues as
16 the medical evidence is developed further. The evidence on Plaintiff's fibromyalgia might
17 affect how her credibility is assessed, and what work she is able to do. The Court expresses
18 no opinion on these subjects.

19 In accordance with the foregoing, the Commissioner's decision is reversed,
20 and the matter is remanded to the Commissioner for further proceedings consistent with
21 this Memorandum Opinion.

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23 DATED: March 22, 2012

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26 RALPH ZAREFSKY
27 UNITED STATES MAGISTRATE JUDGE
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